

RECEIVED
FEB 19 1961
FEB 19 1961
FEB 19 1961

PERB Case No. 02-U-08

NOW COMES RESPONDENT, THE DISTRICT OF COLUMBIA OFFICE OF THE CHIEF FINANCIAL OFFICER (hereinafter referred to as the “Agency” or the “OCFO”), and files this Answer and Statement of Affirmative Defenses to the Complaint, in accordance with Rule 520.6 of the Rules of the Public Employee Relations Board.

¶¶ 1-3. There are no averments of fact that require response by way of admission, denial or otherwise in the first three numbered paragraphs of the complaint.

¶ 4. The Agency admits the averment contained in Paragraph 4.

¶ 5. The Agency admits that it separated two employees assigned to the MPD Department of Finance on September 28, 2001, pursuant to the at-will personnel authority granted to the CFO under the 1996 and 1997 D.C. Appropriations Acts. Those

two employees were Brenda Barlow and Etheleen Flood. Mary Harris retired. The Agency denies any averments contained in Paragraph 5 that are inconsistent with the foregoing admissions.

¶ 6. The Agency admits that it had scheduled an exit interview for Brenda Barlow to take place on October 11, 2001. Etheleen Flood appeared for an interview on October 11, 2001, without an appointment, after having failed to appear for two earlier scheduled interviews. A NAGE official accompanied Barlow and Flood.

¶ 7. The Agency admits the averments contained in Paragraph 7.

¶ 8. The Agency denies the averment contained in Paragraph 8.

¶ 9. The Agency lacks knowledge of the averments contained in the first sentence in Paragraph 9. The Agency admits the averment contained in the second sentence of that same Paragraph.

¶ 10. The Agency admits the averments contained in Paragraph 10.

¶ 11. Paragraph 11 recites a legal conclusion that does not require response by way of admission, denial or otherwise. To the extent a response is deemed required, the Agency denies all averments contained in Paragraph 11.

¶ 12. Paragraph 12 recites a legal conclusion that does not require response by way of admission, denial or otherwise. To the extent a response is deemed required, the Agency denies all averments contained in Paragraph 12. The Agency further denies that Complainant is entitled to the relief sought under Subparagraphs a-f of Paragraph 12.

Related Proceedings

The question of the Board's jurisdiction over the Agency is the subject of two related Rule 1 appeals pending before the Superior Court of the District of Columbia:

D.C. OCFO v. PERB, CA 98-MPA-5 (Sup.Ct., Herbert B. Dixon, Jr.); and D.C. et al. v. PERB, CA 99-MPA-11 (Sup.Ct., Susan Winfield). There has been no final decision in either case. In connection with the resolution of PERB Case No. 96-UC-01, the Board determined to hold in abeyance further proceedings connected with representation affecting the CFO pending the outcome of the appeal. In D.C. et al. v. PERB, CA 99-MPA-11, the Court stayed action on the Board's order of enforcement pending the outcome of the appeal.

Affirmative Defenses

1.

The Office of the Chief Financial Officer is not subject to the provisions of the Labor Management Relations Act codified at D.C. Code Annotated Section 1-618.

2.

In January 1997, Petitioner was among the plaintiffs who filed suit against the OCFO in the United States District Court for the District of Columbia, challenging the OCFO's right to terminate approximately 168 budget, accounting and financial employees employed in executive and independent agencies throughout the District under §§ 152 and 142 of the Consolidated Rescissions and Appropriations Act of 1996 and 1997. See AFSCME DC 20 et al v. DC et al, CA 97-185 (USDC, EGS). In May 1999, the United States Court of Appeals for the District of Columbia sustained the CFO's authority to terminate employees without notice or an opportunity for a hearing, as previously found by the Honorable Emmett Sullivan of the United States District Court for the District of Columbia. Petitioner did not seek further review of the District Court's ruling.

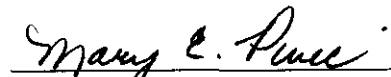
3.

Employees are not entitled to union representation at an exit interview intended to convey information related to the termination of employment, as opposed to disciplinary action. *See N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251, 95 S.Ct. 959, 43 L.Ed.2d 171, (1975) (holding that an employee is entitled to request union representation when he or she entertains a reasonable belief that he may be asked questions that could result in the imposition of disciplinary action).

Dated: February 19, 2002

Respectfully Submitted:

GREENBERG TRAURIG LLP



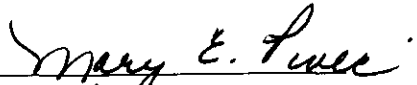
Mary E. Pivec, D.C. Bar No. 445760
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 452-4883

Attorneys for the Agency,
Office of the Chief Financial Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2002, the Agency's Answer was mailed via first-class postage, to counsel for the Petitioner, Gina Lightfoot-Walker, Assistant Regional Counsel, at the following address:

317 South Patrick Street.
Alexandria. Virginia 22314



Mary E. Piver

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R3-05,

Petitioner,

v.

District of Columbia Office of Chief
Financial Officer/ District of Columbia
Chief Financial Officer,
Metropolitan Police Department
Agency.

UNFAIR LABOR PRACTICE
CHARGE

PERB No. ~~000~~-02-U-08

Now comes the Petitioner, the National Association of Government Employees ("NAGE"), Local R3-05, in the above captioned matter and hereby charge that the District of Columbia, Office of Chief Financial Officer and the Office of Chief Financial Officer/Metropolitan Police Department ("OFCO/MPD" or "Agency") has engaged in prohibited personnel practices as alleged in the following paragraphs:

1. NAGE is a national organization representing over 50,000 federal, state, and municipal government employees. NAGE, through its representatives and agents, negotiates contracts and provides full representation for NAGE, Local R3-05 in its relationship with the District of Columbia government.
2. NAGE, Local R3-05 is the exclusive bargaining representative of the civilian

employees of the District of Columbia Metropolitan Police Department ("MPD"), including employees assigned to the Office of the Chief Financial Officer ("OCFO") at the MPD.

3. NAGE, Local R3-05 is a labor organization within the meaning of D.C. Code § 1-618.3.

4. The Office of the Chief Financial Officer at the MPD reports directly to the District of Columbia Chief Financial Officer.

5. On September 28, 2001, the Office of the Chief Financial Officer separated three bargaining unit employees, Ms. Etheleen Flood, Ms. Brenda Barlow and Ms. Mary Harris.

6. On October 11, 2001, two of the employees were scheduled for exit interviews in response to notices received from the Agency. Ms. RosaMary Davenport, National Representative for NAGE's Washington D.C. Regional Office, accompanied the terminated employees to their respective exit interviews. See Exhibit 1.

7. Upon their arrival, Ms. Davenport, Ms. Flood, and Ms. Barlow spoke with Ms. Monique Salahuddin, Human Resource Manager, who stated she was not aware that a union representative would be accompanying the employees and that she would have to secure a clearance for Ms. Davenport to assist the employees with their exit interviews. Ms. Davenport stated that she was only there as an advisor to the employees, to assist them with any questions they might have regarding their respective terminations. Ms. Salahuddin stated that she would inquire as to

whether Ms. Davenport could be present. She also stated that she would be re-scheduling the meeting.

8. However, to avoiding meeting with Ms. Davenport, the information was sent to the employees' home addresses.

9. On October 15, 2001, Ms. Davenport received a telephone call from Ms. Flood who stated that a courier had appeared at her door on Saturday, October 13, 2001, with a package from the OFCO Mission Support Office. Ms. Davenport telephoned Ms. Salahuddin, who was not available and left a message to re-schedule the exit interview.


10. On October 15, 2001, Ms. Salahuddin contacted Ms. Davenport and stated that the exit interview would not be re-scheduled because both Ms. Barlow and Ms. Flood had already received all of the paperwork and benefit information they needed and would have received in the exit interview with the specialist. She reiterated to Ms. Davenport that the Chief Financial Officer did not recognize the union and thus her office would not be meeting with any union representative. She directed Ms. Davenport to speak to the General Counsel's Office.

11. In refusing to meet with Ms. Davenport, the Agency refused to recognize the Union as the exclusive bargaining representative of employees in the OFCO/MPD, as required by the D.C. Code.

12. By its conduct, described, in paragraphs 7-11 above, the Agency violated D.C. Code § 1-618(a)(1),(5). Thus, NAGE hereby requests that the Public Employee Relations Board order the following relief:

- a. Order the D.C. Chief Financial Officer and/or OFCO/MPD to cease and desist from refusing to recognize NAGE as the exclusive bargaining representative of bargaining unit members in the OFCO/MPD;
- b. Order the D.C. Chief Financial Officer and/or the OFCO/MPD to recognize its bargaining obligations to members of NAGE, Local R3-05 who are employed in the OFCO/MPD;
- c. Order the D.C. Chief Financial Officer and/or the OFCO/MPD to make whole any affected bargaining unit employee;
- d. Order the D.C. Chief Financial Officer and/or the OFCO/MPD to reinstate with back pay and interest employees separated on September 28, 2001;
- e. Order the Chief Financial Officer and/or OFCO/MPD, within fourteen calendar days of the decision and order, to post appropriate notices of its violation of the law; and
- f. Order any and all appropriate relief.

Respectfully submitted,



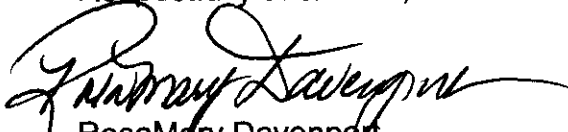
Gina Lightfoot-Walker
Assistant Regional Counsel
317 South Patrick Street
Alexandria, VA 22314
(703) 519-0300
fax: (703) 519-0311

Affidavit of RosaMary Davenport

I, RosaMary Davenport, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am a National Representative for the National Association of Government Employees.
2. On October 11, 2001, I accompanied Ms. Etheleen Flood and Ms. Brenda Barlow, recently terminated employees of the District of Columbia Metropolitan Police Department, Office of the Chief Financial Officer (OFCO) to their respective exit interviews in the OCFO, Mission Support, 941 North Capitol Street, N.W, Room 1200, Washington, D.C.
3. Upon our arrival, Ms. Flood, Ms. Barlow and I spoke with Ms. Monique Salahuddin, Human Resource Manager, who stated she was not aware that a union representative would be accompanying the employees and that she must secure clearance for me to assist the employees with their exit interview. I stated that I was only there as an advisor to the employees and to assist them with any questions they may have regarding their respective terminations. Ms. Salahuddin stated that she would inquire as to whether I could be in attendance and would re-schedule the meeting. I gave her my business card and we left the premises.
4. On October 15, 2001, I received a telephone call from Ms. Flood who stated that a courier had appeared at her door on Saturday, October 13, 2001 at approximately 7 p.m., to deliver a package from the OFCO Mission Support Office. At that time, I telephone Ms. Salahuddin, who was not available and left a message regarding the re-scheduling of the exit interview.
5. On October 15, 2001, at approximately 4:00p.m., Ms. Salahuddin returned my call and stated that the exit interview would not be re-scheduled because both Ms. Barlow and Ms. Flood had received all of the paperwork and benefit information they needed and would have received in an exit interview with the specialist. She again reiterated that the Chief Financial Officer does not recognize the union and thus her office would not be meeting with any union representative at this time. She stated that until that changes, I could contact the General Counsel's Office if I had further questions.

Respectfully submitted,


RosaMary Davenport
National Representative

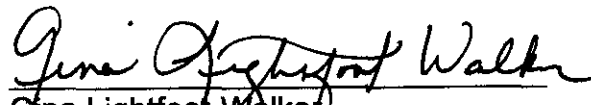
Executed: November 16, 2001

CERTIFICATE OF SERVICE

I, Gina Lightfoot-Walker, hereby certify that on January 28, 2002, I served a copy of the above Unfair Labor Practice Charge, including attachment, by regular mail, postage prepaid, on the following:

Mr. Natwar M. Ghandi
Chief Financial Officer
D.C. Office of the Chief Financial Officer
1350 Pennsylvania Avenue, N.W.
Room 209
Washington, D.C. 20004

Ms. Wynette Wilkins
Deputy Chief Financial Officer
Metropolitan Police Department
300 Indiana Avenue, N.W.
Washington, D.C. 20001


Gina Lightfoot-Walker